

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2304 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATVARLAL C SOLANKI

Versus

DIRECTOR OF GEOLOGY & MINING

Appearance:

None present for Petitioner

MR SR DIVETIA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/09/97

ORAL JUDGMENT

#. The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the petitioner. Perused the Special Civil Application and heard learned counsel for the respondent.

#. The petitioner, a Laboratory Assistant in the office

of Director of Geology & Mining, Government of Gujarat at Ahmedabad, filed this Special Civil Application and prayer has been made for direction to the respondent to issue identical orders as per annexure 'D' and further prayer has been made for quashing and setting aside the order annexure 'B' of the respondent dated 29.10.91.

#. Under the order annexure 'B', respondents No.3 to 6 were given appointments on the post of Senior Laboratory Assistant. Originally, these respondents were not joined as a party to this Special Civil Application but subsequently as it comes out from the title of Special Civil Application, these respondents, alongwith respondent No.2, have been added as respondents as per the Court's order. In the Special Civil Application, Notice has been issued on 18th March 1993. The application for adding these respondents as party has been filed before this Court on 29th March 1994. So their appointments are sought to be challenged by petitioner after about two years and five months from the date of appointments. No explanation whatsoever has been furnished for delay which has occurred in challenging the aforesaid order. If we go by the original Special Civil Application, then too there is a delay of more than one year and six months.

#. The applications were invited for the post of Senior Laboratory Assistant vide advertisement dated 6.2.91. In response to this advertisement, the petitioner submitted his application but he was not called for interview as he could not fulfil the eligibility for the said post. Though only one post has been advertised, under the order dated 29.10.91, four appointments have been made. The petitioner made a grievance that against advertisement of one post, four appointments could not have been made. From the order annexure 'B', it comes out that three posts, namely, Photographic Assistant, Section Grinder and Instrument Mechanic were converted to the post of Senior Laboratory Assistant. The respondent-State, in the reply, has given out explanation for the change of aforesaid three posts in the category of Senior Laboratory Assistant. However, the fact remains that the petitioner was not eligible for appointment to the post of Senior Laboratory Assistant and therefore even if against advertised one post, four appointments have been made, he cannot make any grievance. Only a person who is eligible for appointment on the said post could have made a grievance and not the petitioner. So this is another ground on the basis of which the petitioner has no case whatsoever, on merits. There is yet another important ground against the petitioner on which this petition

deserves to be dismissed. The petitioner claims that the post of Senior Laboratory Assistant should have been filled in by promotion instead of by direct recruitment and reference has been made to annexure 'D'. The petitioner filed appeal No.405 of 1991 before the Gujarat Civil Services Tribunal at Gandhinagar, challenging therein the appointments made of three of the respondents herein, namely respondents No.3, 4 and 5 on the ground that they have wrongly been appointed by direct recruitments on the said post and these three posts should have been filled in by promotion. This claim of the petitioner was not accepted by Tribunal and the appeal aforesaid came to be dismissed under the order dated 2.7.92. This Special Civil Application has been filed by the petitioner much after that date, but conveniently, this important and relevant fact has been concealed by him. By concealing this important fact, the petitioner got the order of issuance of Notice upon respondent. Once the petitioner has lost in his grievance regarding the claim of promotion against three respondents, then otherwise also this petition was not maintainable. The petitioner has not challenged that order of Tribunal and as such, that decision has attained finality. The fact of challenging the appointments of three respondents and claim of the petitioner for promotion was the subject matter of appeal and as such, it was the duty of petitioner to disclose this fact. Concealment of this fact is sufficient ground for dismissal of this Special Civil Application. The petitioner, by concealing this fact, has made another attempt to get his claim of promotion on the post of Senior Laboratory Assistant, which has already been rejected by the Tribunal before filing this Special Civil Application. It is a clear case of abuse of process of this Court.

#. In the result, this Special Civil Application fails and the same is dismissed. It is a case where the petitioner has abused the process of Court and as such exemplary cost has to be imposed. The petitioner is directed to pay Rs.5,000/- as costs of this Special Civil Application to respondent No.1. The respondent No.1 is directed to recover this cost from the salary of the petitioner on monthly instalment of Rs.500/- and after recovering this amount, the same may be deposited in the Chief Minister's Relief Fund and a receipt of deposit of the said amount may be produced on record of the Special Civil Application. Notice stands discharged.

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(sunil)